

DRAFT DIRECTIVE TRANSMITTAL
WORKFORCE SERVICES

Number: WSDD-17

Date: August 26, 2008

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: NONDISCRIMINATION AND EQUAL OPPORTUNITY PROCEDURES

☒ **IMMEDIATE ACTION**

Bring this draft to the attention of the appropriate staff.

☒ **E-MAIL COPY TRANSMITTED**

Number of pages (including coversheet): 18

If there are any problems with this transmittal, please call the Pagemaster at 916/654-8008.

SUBJECT MATTER HIGHLIGHTS:

This directive reflects minor revisions to the data verification requirements for the Workforce Investment Act (WIA) Adult and Dislocated Worker programs. Specifically, this directive provides Local Workforce Investment Areas (LWIA) the option of documenting the verification of customer data in an electronic environment rather than maintain hard copy files.

PLEASE NOTE: This draft directive will supersede Directive WSD07-6, dated January 16, 2008.

COMMENTS ARE DUE BY:

9/16/08

Comments can be submitted through one of the following ways:

- 1) **Fax** — WSD, Attention: **Keita LaFavor** at (916) 654-9753.
- 2) **E-Mail** — Keita.Lafavor@edd.ca.gov (Include "draft comments" in the subject line)
- 3) **Mail** — WSD / P.O. Box 826880 / MIC 69 / Sacramento, CA 94280-0001

All comments received by the end of the comment period will be considered before the final directive is issued. The Workforce Services Branch does not respond individually to each comment received. However, a summary of comments will be released with the final directive. **Comments received after the specified due date will not be considered.**

If you have any questions, contact the Workforce Services Division at (916) 654-7799.

DRAFT DIRECTIVE

WORKFORCE SERVICES

Number:

Date:

69:62:cs:12185

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: NONDISCRIMINATION AND EQUAL OPPORTUNITY PROCEDURES

EXECUTIVE SUMMARY:

Purpose:

This directive contains the State's policy on the nondiscrimination and equal opportunity procedures for the Workforce Investment Act (WIA) Title I and Wagner-Peyser (WP) funded programs or activities. It also includes a standard discrimination complaint form that is available for use by the workforce development community when processing discrimination complaints and a procedure guide for use when processing reasonable accommodation requests. In addition, it contains minor revisions to the data verification requirements for the WIA Adult and Dislocated Worker programs, enabling the LWIAs to document the verification of customer data in an electronic environment rather than maintain hard copy files.

Scope:

This directive applies to entities that provide services through WIA Title I or WP funded programs and activities.

Effective Date:

This directive is effective on date of issue.

REFERENCES:

- Section 188 of the Workforce Investment Act of 1998
- Americans with Disabilities Act of 1990, Title II, Subpart A
- Age Discrimination Act of 1975, as amended
- Section 504 of the Rehabilitation Act of 1973
- Title IX of the Education Amendments of 1972
- Titles VI and VII of the Civil Rights Act of 1964, as amended
- Title 20 Code of Federal Regulations (CFR) Section 667.275
- Title 20 CFR Section 658.400
- Title 29 CFR Parts 31, 32, and 37

EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Special requests for services, aids, and/or special formats need to be made by calling (916) 654-8055 (Voice). TTY users, please call the California Relay Service at 711.

- Title 41 CFR Subpart 101-19.6
- Fair Employment and Housing Act (Government Code, Title 2, Division 3, Part 2.8), Chapters 1-6
- Dymally-Alatorre Bilingual Services Act, Government Code Section 7290-7299.8
- WIA Directive WIAD04-20, Subject: Limited English Proficiency (May 12, 2005)
- Workforce Services Directive WSD07-11, Subject: Data Verification Requirements – WIA Customer Data Collection (June 16, 2008)

STATE-IMPOSED REQUIREMENTS:

This directive contains some State-imposed requirements. These requirements are indicated by ***bold, italic*** type.

FILING INSTRUCTIONS:

This directive supersedes Directive WSD07-6, dated January 16, 2008. Retain this directive until further notice.

BACKGROUND:

This directive reiterates the guidance contained in WSD07-6 which states that the WIA Section 188 nondiscrimination and equal opportunity provisions prohibit discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I financially assisted program or activity. Title 29 CFR Part 37 implements the nondiscrimination and equal opportunity provisions specified in Section 188 of WIA.

POLICY AND PROCEDURES:

Definitions:

Complaint, for this directive only, means an allegation of a violation of the nondiscrimination and equal opportunity provisions.

Complaint file is a file that is maintained in a central location within each office which includes a hard copy of each complaint filed along with pertinent documentation.

Participant case file means either a hard copy or an electronic file.

Recipient, taken from Title 29 CFR Part 37, means any entity to which financial assistance under WIA Title I is extended, either directly from the Department of Labor (DOL) or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIA Title I funded program or activity. In addition, One-Stop partners, as defined in Section 121(b) of the WIA, are treated as "recipients" and are subject to the nondiscrimination and equal opportunity requirements of Title 29 CFR Part 37, to the extent that they participate in the One-Stop delivery system.

Small recipient means a recipient who (1) serves a total of fewer than 15 beneficiaries during the entire grant year and (2) employs fewer than 15 employees on any given day during the grant year.

General Provisions:

Title 29 CFR Section 37.54(a) requires that each Governor must establish and adhere to a Methods of Administration (MOA) for state programs. The MOA is a state-level document that reflects the Governor's commitment to nondiscrimination and equal opportunity.

The MOA contains nine distinct elements. This directive outlines these elements and highlights compliance requirements that are significant to programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners.

1. Designation of Local-Level Equal Opportunity (EO) Officer

Each Local Workforce Investment Area (LWIA) must designate an EO Officer who is responsible for coordinating its obligation under these regulations. ***The State requires that the LWIAs notify the Equal Employment Opportunity (EEO) Office whenever the designation of the local EO Officer changes.***

The EO Officer's responsibilities include:

- Serving as liaison with the Civil Rights Center (CRC).
- Investigating and monitoring the organization's and its subrecipients' activities and programs.
- Reviewing the organizations and its subrecipients' written policies.
- Developing, publishing, and enforcing the organization's discrimination complaint procedures.
- Reporting to the appropriate authority regarding discrimination matters.
- Participating in continuing education, and ensuring that staff receives continuing education, to maintain competency.
- Informing applicants, employees and program beneficiaries of their equal opportunity rights and responsibilities, and how the discrimination complaint system works.

The LWIAs must submit a copy of the local-level EO Officer's position description and organizational chart showing the relationship of each local-level EO Officer to their LWIA Administrator. The LWIAs will assign sufficient staff and resources to the EO Officer to ensure compliance with the nondiscrimination and equal opportunity provisions of WIA and Title 29 CFR Section 37.23.

Please mail required documents to the following address:

**Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P.O. Box 826880
Sacramento, CA 94280-0001**

The EO Officer's name, position title, business address (including e-mail address if applicable) and telephone number (voice and Telecommunications Device for the Deaf (TDD), which is also known as teletypewriter (TTY) must be publicized at the local level through a variety of means including posters, handouts, and listings in local directories.

Periodic training is recommended for the EO Officer and staff to keep abreast of equal opportunity issues. Training on nondiscrimination and equal opportunity is available through the State EO Officer and the Capacity Building Unit of the WSD.

Small recipients and service providers, as defined in Title 29 CFR Section, Part 37.4, need not designate an EO Officer with the full responsibilities as described above, but must designate an individual who will be responsible for the developing and publishing of complaint procedures and the processing of complaints as required by Section 37.76 through 37.79.

Additionally, the WIA Title I Governor's 15 and 25 percent subgrantees (except LWIAs) are not required to designate an EO Officer, but must designate an individual who will be responsible for adopting and publishing the EDD complaint procedures. Therefore, in lieu of a local complaint procedure, the WIA Title I Governor's 15 and 25 percent subgrantees must adopt the EDD's nondiscrimination and equal opportunity complaint procedures. The complaint procedures must include the option to file a charge of discrimination directly with the CRC. For more information, contact the State EO Officer listed below:

**Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001**

2. Notice and Communication Requirements

Initial and continuing notice of nondiscriminatory practices (Attachment 1 and 2) and the right to file a complaint must be:

- Posted in prominent locations;

- Disseminated in internal memoranda and other written or electronic communications;
- Included in handbooks and manuals, brochures, broadcasts, and other communications;
- Made available to each participant.

Finally, where a hard copy case file is maintained, a copy of an acknowledgement of receipt of the local grievance and complaint procedures shall be signed by the participant and included in each participant's case file. Where an electronic case file is maintained, staff must make a note indicating that this notification did occur, the date of the notification, and the name of the staff person who provided it.

The notice shall be provided in appropriate formats to individuals with visual impairments. A record of such notice shall be documented in the participant's case file.

For information and services accessed electronically, each recipient shall establish a procedure, which assures that the notice requirements of Title 29 CFR Part 37 are met.

Distributed publications, broadcasts, electronic media and other communications, which promote WIA programs or activities, must include the following taglines: "This WIA Title I financially assisted program or activity is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities."

This applies similarly to those recipients required by law or regulation to publish or broadcast program information in public media. Where appropriate, information and services should be provided in languages other than English.

On August 11, 2000, President Clinton issued Executive Order 13166, entitled "Improving Access to Services for Persons with Limited English Proficiency." This Executive Order mandates that individuals with limited English proficiency (LEP) have equal access to federally funded programs and activities. As required by Executive Order 13166, the DOL/CRC published revised policy guidance in the Federal Register (May 29, 2003) regarding the prohibition against national origin discrimination as it affects LEP individuals. This revised policy offers guidance from the DOL with respect to the responsibilities of recipients of federal financial assistance in serving LEP individuals, pursuant to the requirements of Title VI of the Civil Rights Act and Section 188 of WIA. Recipients of federal financial assistance must take reasonable steps to ensure that individuals having LEP receive the language assistance necessary to afford them meaningful access to programs, services, and information provided by the recipients.

The Dymally-Alatorre Bilingual Services Act (DABSA) requires that, when state and local agencies serve a "substantial number of non-English-speaking people," they must employ a "sufficient number of qualified bilingual staff in public contact positions" and translate documents explaining available services in their clients' language. The DABSA establishes specific legal mandates for state agencies, but allows local agencies discretion in establishing the level and extent of bilingual services they provide.

Where materials indicate that the recipients may be reached by telephone, the telephone number of any TDD/TTY or relay service used by the recipient must be indicated. If the recipient does not have a TDD/TTY, the California Relay Service (CRS) (1-800/735-2922) is an alternative. The CRS relays messages to deaf persons via the telephone. A caller can contact the relay service by voice or TDD, and an operator will contact the party to be called using voice or TDD/TTY. A TDD/TTY or relay service should be available where services provided by telephone are a major function of the program or activity.

3. Review Assurances in Job Training Plans, Contracts, and Policies and Procedures

A system must be implemented to ensure that all contracts, job training plans, and policies and procedures contain the nondiscrimination assurance as specified. The nondiscrimination assurance must state that the grant applicant will "comply fully with the nondiscrimination and equal opportunity provisions" of WIA and acknowledge the government's right to seek judicial enforcement of the nondiscrimination assurance.

Title 29 CFR Section 37.20 requires that each application for federal financial assistance under Title I of WIA must include the nondiscrimination assurance. Application for assistance is defined as the process by which required documentation is provided to the Governor, recipient, or DOL prior to and as a condition of receiving federal financial assistance under Title I of WIA (including both new and continuing assistance).

4. Universal Access

As required in Title 29 CFR Section 37.42, recipients must ensure universal access to WIA Title I financially assisted programs and activities by:

- Implementing an outreach and recruitment plan to solicit participation of all potentially WIA Title I-eligible applicants in the entire locale;
- Creating an outreach and recruitment plan that will reach specific target populations through media, schools, and community services groups;
- Considering a pool of individuals for participation that includes members of both sexes, various race/ethnicity/age groups, and individuals with disabilities;
- Establishing a hiring and eligibility process that is accessible to qualified applicants with disabilities; and

- Utilizing facilities designed to provide reasonable access to individuals with disabilities in the following areas: training, job structure, work schedule, work procedure, and work equipment and auxiliary aids accommodations.

5. Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended and Title 29 CFR Part 37

The recipients must ensure the accessibility to their training programs and activities for all individuals, and must administer their training programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. This includes employment tests or other selection criteria used by recipients that do not screen out individuals with disabilities, and training programs accessible to individuals with visual, hearing, or speech impairments. The recipients must provide means for individuals with disabilities to receive information about availability of facilities accessible to them. Additionally, recipients must provide auxiliary aids and services and reasonable accommodation to qualified individuals with disabilities to enable them to perform duties of the job (e.g., special aids, modified work sites, or restructuring of jobs).

The recipients must also provide:

- Designated parking for the disabled that is accessible to the building entrance, free of any barriers (e.g., steps, steep slopes, low spots in ground or pavement, buckled concrete, gravel);
- Signage at a primary entrance to each of their inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities;
- The international symbol for accessibility at each primary entrance of an accessible facility;
- Building entrance doors that can be opened with one hand;
- Accessible information/public counter areas;
- Facility elevators that are accessible from the entrance meeting the above criteria;
- Elevator control panel and entrance buttons with raised numbers and Braille symbols at an accessible height;
- At least one accessible public telephone;
- Accessible meeting rooms with Braille symbols at an accessible height;

- Restroom facilities that have at least one toilet stall with an accessible doorway. The stall should have grab bars and the toilet stool should be accessible for the disabled individual after the door is closed (access to the grab bars should not be obstructed by such things as toilet paper dispensers, etc.); and Alternative methods to ensure that training, job structure, work schedule, work procedure, and work equipment are available to individuals with disabilities when the facilities are not physically accessible to individuals with disabilities.

Title 29 CFR Section 37.8—With regard to aid, benefits, services, training, and employment, a recipient must:

- Provide reasonable accommodation to qualified individuals with disabilities, who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause the recipient undue hardship on business operations; and
- Make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the WIA Title I financially assisted service, program, or activity.

In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship or the proposed modification would fundamentally alter the program, the recipient has the burden of proving that compliance with this section would result in such hardship and alteration. The recipient must make the decision that the accommodation would cause such hardship or result in such alteration after considering all factors listed in the definitions of "undue hardship" and "fundamental alteration." The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual(s) who requested the modification.

If a requested accommodation would result in undue hardship or a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such burden or such alteration but would nevertheless ensure that individuals with disabilities receive the aid, benefits, services, training or employment provided by the recipient.

Title 29 CFR Section 37.4 defines "undue" hardship" with regard to reasonable accommodation of individuals with disabilities as significant difficulty or expense incurred by a recipient, when considered in light of certain factors to be considered. These factors include, but are not limited to, the nature and net cost of the accommodations needed, overall financial resources of recipient, type of operation(s) of recipient, the number of persons aided, benefited, served, trained, or employed, the impact on the ability of other participants to receive aids, benefits, services, or training, or of other employees to perform their duties and the impact on the facility's ability to carry out its business.

The term "fundamental alteration" means (1) a change in the essential nature of a program or activity as defined in Title 29 CFR Part 37, including but not limited to an aid, service, benefit, or training or (2) a cost that a recipient can demonstrate would result in an undue burden. The definition of "fundamental alteration" incorporates the concept of "undue financial and administrative burdens" in Title 29 CFR Part 37.

In addition, recipients must take appropriate steps to ensure that communications with beneficiaries, registrants, applicants, participants, and members of the public who are individuals with disabilities are as effective as communications with others.

A Reasonable Accommodation Policy and Procedure Guide is now available for use when processing reasonable accommodation requests (see Attachment 4). This document contains two sections. The first section (pages 1 through 8), provides general guidance and definitions for use when processing reasonable accommodation requests. The second section (pages 9 through 14), provides step-by-step instructions on how to process these requests.

6. Data and Information Collection and Maintenance

In compliance with Section 188 of WIA, any entity to which financial assistance under WIA Title I is extended, either directly from the DOL or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIA Title I funded program or activity must:

- Collect data on race/ethnicity, sex, age, and, where known, disability status, of each applicant, registrant, eligible applicant/registant, participant, terminee, applicant for employment, and employee;
- Maintain records of data in a system designed to allow the State and CRC to conduct statistical or other quantifiable analyses to verify compliance;
- Safeguard the confidentiality of the required information (confidential information should only be used for recordkeeping and reporting purposes; determining eligibility, where appropriate, for WIA Title I financially assisted program or activity; determining if the recipient is operating its WIA program in a nondiscriminatory manner, or other use authorized by law);
- Maintain a log of complaints filed alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I financially assisted program and activity. The log must include: (1) name and address of the complainant; (2) grounds of the complaint; (3) description of the complaint; (4) date complaint was filed; (5) disposition and date of disposition of complaint; and (6) any other pertinent information.

The EEO Office requires a copy of the complaint log annually (calendar year). Please mail it to the following address:

**Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001**

- Promptly notify the CRC of any administrative enforcement actions or lawsuits filed against a LWIA alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I financially assisted program and activity. Provide a brief description of the findings in any civil rights compliance review where the applicant or recipient was found in noncompliance and keeps a log containing certain information regarding complaints filed with it according to procedures set by the CRC;
- Retain records, including records of complaints, for a period of not less than three years from the close of the applicable program year or date of resolution of complaint; and
- Adopt procedures for responding to complaints of discrimination.

7. Monitor Recipients for Compliance

In accordance with Title 29 CFR Sections 37.54(d) (2) (ii) and 37.54(d) (2) (iii), the EEO Office of the EDD monitors LWIAs for compliance with WIA provisions and related regulations.

The EEO Office requires that each LWIA complete and submit the biennial self-evaluation issued by the EEO Office. The EEO Office will review the self-evaluations, along with other equal opportunity-related data, to coordinate and determine if the LWIA will be monitored on-site during a given program year.

Through self-evaluations, LWIAs can identify the compliance status of their programs, activities, and areas in which they need technical assistance.

8. Complaint Processing Procedures

In compliance with nondiscrimination and equal opportunity provisions of the WIA and Title 29 CFR Section 37.76, the EO Officer must:

- Develop and publish procedures (including alternative dispute resolution) for resolving allegations within the LWIA for noncompliance with applicable nondiscrimination and equal opportunity provisions; develop and publish procedures for resolving allegations against service providers for noncompliance with applicable nondiscrimination and equal opportunity provisions. The service providers must then follow those procedures (NOTE: Although the LWIA does

not have the same contractual jurisdiction with vendors as with service providers, ***the LWIA shall document the facts of an alleged complaint. The facts should be used to advise the participant of any recourse available and to determine if the LWIA should continue to utilize the services of the vendor.***); and

- Establish a system to record discrimination complaints.

The LWIA's complaint processing procedures must specify the following:

- a. Any person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of WIA may file a written complaint by using the Discrimination Complaint Form – Workforce Development Community, or a representative may file the complaint on his or her behalf.
- b. The complaint may be filed either with the recipient's EO Officer (or the person designated for this purpose), or directly with the CRC, U.S. Department of Labor, 200 Constitution Avenue N.W., Room N-4123, Washington, D.C. 20210.
- c. A complaint filed pursuant to Title 29 CFR 37 must be filed within 180 days of the alleged discrimination. The CRC, if shown good cause, may extend the filing time. In order to receive an extension, the complainant must be notified that a waiver letter is to be filed with the CRC. The waiver letter should include the reason the 180-day time period elapsed. This time period for filing is for the administrative convenience of the CRC and does not create a defense for the respondent.
- d. Complaints must be filed in writing by completing the Discrimination Complaint Form – Workforce Development Community or your own local form. Regardless of the form used, all complaints must capture the following information and shall:
 - Be signed by the complainant or his or her representative;
 - Contain the complainant's name, address, or other means of contacting him or her;
 - Identify the respondent; and
 - Describe the complainant's allegation in sufficient detail to allow the CRC or LWIA, as applicable, to determine whether (1) the CRC or the LWIA has jurisdiction over the complaint; (2) the complaint was filed timely; and (3) the complaint has apparent merit, i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA.
- e. Each complainant and respondent has the right to be represented by an attorney or other individual of his or her own choice.
- f. Alternative Dispute Resolution (ADR):

- (1) The complainant must be offered ADR immediately upon receipt of the complaint. The choice whether to use ADR rests with the complainant; the preferred form of ADR is mediation.

What is Mediation?

Mediation is a voluntary process during which a neutral third party assists both parties (complainant and respondent), communicates their concerns and comes to an agreement about how to resolve a dispute.

The mediator does not make decisions, rule as to who is right or wrong, nor take sides or advocate for one side or the other. The role of the mediator is to help with communication so the parties can reach an understanding about how to best resolve their differences.

As the law allows, mediation proceedings and the information shared are confidential and no information divulged during this mediation may be used in court or any legal or administrative proceedings.

If the parties do not reach an agreement under ADR, the complainant may file directly with the CRC as described in Title 29 CFR Sections 37.71 through 37.74.

- (2) A party to any agreement reached under ADR may file a complaint with the CRC in the event the agreement is breached. In such circumstances, the following rules will apply:

- The non-breaching party may file a complaint with the CRC within 30 days of the date on which the non-breaching party learns of the alleged breach.
- The CRC must evaluate the circumstances to determine whether the agreement has been breached. If the CRC determines that the agreement has been breached, the complainant may file a complaint with the CRC based upon his or her original allegation(s), and the CRC will waive the time deadline for filing such a complaint.

Complaints filed with the LWIA:

- a. The EO Officer shall issue a written acknowledgement of receipt by the LWIA of a complaint alleging discrimination by a WIA Title I recipient and shall include a notice of the complainant's right to representation in the complaint process.

The EEO Office requires one copy of the complaint. Please mail it to the following address:

**Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001**

- b. If the complainant elects not to participate in the ADR process, the EO Officer shall investigate the circumstances underlying the complaint.
- c. At any point in the investigation of the complaint, the complainant, respondent, or the EO Officer may request that the parties attempt conciliation. The EO Officer shall facilitate such conciliation efforts.

What is Conciliation?

Conciliation is a process whereby the parties to a dispute agree to utilize the services of a conciliator, who then meets with the parties separately in an attempt to resolve their differences. Conciliation differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions.

If the conciliator is successful in negotiating an understanding between the parties, said understanding is almost always committed to writing (usually with the assistance of legal counsel) and signed by the parties, at which time it becomes a legally binding contract and falls under contract law.

- d. The LWIA shall be allowed 90 days to issue a Notice of Final Action. If, during the 90-day period, the LWIA issues a decision that is not acceptable to the complainant, the complainant or his or her representative may file a complaint with the CRC within 30 days after the date on which the complainant receives the Notice.
- e. If the 90 days expire and the complainant does not receive a Notice of Final Action from the LWIA, or the LWIA failed to issue a Notice of Final Action, the complainant or his/her representative may, within 30 days of the expiration of the 90-day period, file a complaint with the CRC. In other words, the complaint must be filed with the CRC within 120 days of the date on which the complaint was filed with the LWIA.
- f. The CRC may extend the 30-day time limit if the complainant is not notified, as provided in Title 29 CFR Section 37.81, or for other good cause shown.
- g. The LWIA shall notify the complainant in writing immediately upon determining that it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of WIA. The Notice of Lack of

Jurisdiction must also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with the CRC within 30 days of receipt of the Notice.

h. During the resolution process, the EO Officer shall assure that all parties involved are given due process. These due process elements include:

- Notice to all parties of the specific charges;
- Notice to all parties of the responses to the allegations;
- The right of both parties to representation;
- The right of each party to present evidence, and to question others who present evidence; and
- A decision made strictly on the evidence on the record.

Actions by the CRC:

- a. The CRC determines acceptance of a complaint filed pursuant to Title 29 CFR Section 34.82. When the CRC accepts a complaint for investigation, it shall:
 - Notify the LWIA and the complainant of the acceptance of the complaint for investigation; and
 - Advise the LWIA and complainant on the issues over which the CRC has accepted jurisdiction.
- b. The LWIA, the complainant, or a representative may contact the CRC for information regarding the complaint filed.
- c. When a complaint contains insufficient information, the CRC will seek the needed information from the complainant. If the complainant is unavailable after reasonable efforts have been made to reach him or her, or the information is not provided within the time specified, the complaint file may be closed without prejudice upon written notice sent to the complainant's last known address.
- d. The CRC, per WIA Section 183(c), may issue a subpoena to the complainant to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint being investigated. Issuing a subpoena can be done any place in the United States, at any designated time and place.
- e. Where the CRC lacks jurisdiction over a complaint, the CRC shall:

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- Notify the complainant, explaining why the complaint is not covered by the nondiscrimination and equal opportunity provisions of WIA or Title 29 CFR Part 37; and
- Refer the complainant to the appropriate federal, state, or local authority, when possible.

f. The CRC will notify the complainant when a claim is not to be investigated and explain the basis for that determination.

g. The CRC will refer complaints governed by the Age Discrimination Act of 1975 to mediation as specified in Title 45 CFR Section 90.43(c)(3).

h. If the complainant alleges more than one kind of complaint, "joint complaint," e.g., individual employment discrimination, age discrimination, equal pay discrimination, etc., the CRC shall refer such joint complaint to the Equal Employment Opportunity Commission for investigation and conciliation under the procedures described in Title 29 CFR, Parts 1690 or 1691, as appropriate. The CRC will advise the complainant and the LWIA of the referral.

i. Under the One-Stop delivery system where the complainant alleges discrimination by an entity that operates a program or activity financially assisted by a federal grant making agency other than DOL, but participates as a partner in a One-Stop delivery system, the following procedures apply:

- If the complainant alleges discrimination on a basis that is prohibited both by Section 188 of WIA and by a civil rights law enforced by the federal grant making agency, the CRC and the grant making agency have dual jurisdiction over the complaint. The CRC will refer the complaint to the grant making agency for processing. The grant making agency's regulations will govern the processing of the complaint.
- If the complainant alleges discrimination on the basis that is prohibited by Section 188 of WIA, but not by any civil rights laws enforced by the federal grant making agency, the CRC has sole jurisdiction over the complaint and will retain and process the complaint pursuant to Title 29 CFR Part 37. The CRC will advise the complainant and the LWIA of the referral.

j. The CRC may offer the parties of a complaint the option of mediating the complaint. In such circumstances, the following rules apply:

- The mediation is voluntary; the parties must consent before the mediation process will proceed.
- The mediation will be conducted under the guidance issued by the CRC.

- If the parties are unable to reach resolution of the complaint through the mediation, the CRC will investigate and process the complaint under Title 29 CFR Sections 37.82 through 37.88.
- k. After making such a cause finding, the CRC shall issue an Initial Determination. The Initial Determination shall notify the complainant and the LWIA, in writing, of:
- The specific findings of the investigation;
 - The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;
 - Whether it will be necessary for the LWIA to enter into a written agreement; and
 - The opportunity to participate in voluntary compliance negotiations.
- l. Where a no cause determination is made, the CRC must issue a Final Determination to the complainant and the LWIA. The Final Determination represents the DOL's final agency action on the complaint.

9. Corrective Actions/Sanctions

A Letter of Findings, Notice to Show Cause, or Initial Determination issued pursuant to Title 29 CFR Sections 37.62 or 37.63, 37.66 and 37.67, or 37.91, respectively, must include the steps and the specific time period it will take the LWIA to achieve voluntary compliance. (See Section 37.94 for corrective action steps.)

Monetary corrective action may **not** be paid from federal funds.

If the LWIA receives a finding of noncompliance, the following sections of Title 29 CFR Part 37 may be referred to for detailed information:

- Final Determinations, Sections 37.90-37.101
- Breaches of Conciliation Agreements, Sections 37.102-37.105
- Subpart E-Federal Procedures for Effecting Compliance, Sections 37.110-37.115

Intimidation and Retaliation Prohibited:

No recipient may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint; opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIA; furnished information to, or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to administration of,

exercise of authority under, or exercise of privilege secured by the nondiscrimination and equal opportunity of WIA or Title 29 CFR Part 37. The sanctions and penalties contained in these procedures may be imposed against any recipient who engages in any such retaliation or intimidation, or fails to take necessary steps to prevent such activity.

Discrimination Complaint Form – Workforce Development Community

It is important for the EDD to receive documentation with sufficient information for the EDD EEO Office to analyze, compile, and report in a manner that is consistent with the DOL requirements. It is helpful when information gathering efforts include adequate questions that will elicit responses from the complainant, making the need to request additional information less likely.

Since there has been no standard form available to address discrimination complaints, the “*Discrimination Complaint Form – Workforce Development Community*” (Attachment 3), was developed to assist clients and service providers. This new form is available for use by the workforce development community in an effort to provide more consistent information when processing discrimination complaints from clients of WIA and WP funded programs and activities. The workforce development community is encouraged, but not required, to use this standard form.

ACTION:

Bring this directive to the attention of affected staff.

INQUIRIES:

If you have any questions, please contact your [Regional Advisor](#) at (916) 654-7799.

BILL BURKE
Assistant Deputy Director
Workforce Services Branch

BOB HERMSMEIER
Chief
Workforce Services Division

Attachments are available on the Internet:

1. [Equal Opportunity is the Law](#) (PDF)
2. [What to do if you Believe you Have Experienced Discrimination](#) (PDF)
3. [Discrimination Complaint Form](#) (DOC)
4. [Reasonable Accommodation Policy and Procedure Guide](#) (PDF)